

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ZABORA BROWN, )  
Plaintiff, ) CIVIL ACTION FILE  
CITY OF ATLANTA, et al. ) NO. 1:17-CV-4850-MLB  
Defendants. ) ATLANTA, GEORGIA

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL L. BROWN,  
UNITED STATES DISTRICT JUDGE

## **DISCOVERY TELECONFERENCE**

Thursday, September 6, 2018

16 APPEARANCES OF COUNSEL:

17 For the Plaintiffs: THE COCHRAN FIRM  
(By: Shean D. Williams  
18 Samuel L. Starks)

21 For the Defendant PREBULA & ASSOCIATES, LLC  
Burns: (By: Mary A. Prebula)

23        *Proceedings recorded by mechanical stenography*  
24        *and computer-aided transcript produced by*  
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1 Thursday Afternoon Session

2 September 6, 2018

3 3:35 p.m.

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5 P R O C E E D I N G S

6 THE COURT: Good afternoon, everyone.

7 MS. PREBULA: Good afternoon, Judge.

8 MR. WILLIAMS: Good afternoon, your Honor.

9 THE COURT: So we're here on Rogers v. City of  
10 Atlanta, 16-CV-2578. Could I get everyone to announce their  
11 appearances, starting with the plaintiff and then the City and  
12 then Mr. Burns.

13 MR. WILLIAMS: Yes. Shean Williams here on behalf of  
14 the plaintiff.

15 MR. STARKS: And Sam Starks, your Honor, for the  
16 plaintiff.

17 THE COURT: Ms. Cherry?

18 MS. CHERRY: Rita Cherry and Staci Miller for the  
19 City of Atlanta.

20 MS. PREBULA: And Mary Prebula for Mr. Burns.

21 THE COURT: All right. So I recognize everybody's  
22 voices because we've had so many of these calls, and so I  
23 understand this one arose because plaintiffs' counsel filed a  
24 30(b)(6) notice with what looks to be a large number of  
25 topics, totaling 36. The City saw it and decided that that

1 was too much or some of them are inappropriate, and the  
2 initial reaction was let's get back on the line with the  
3 judge. Is that right? Is that where we are?

4 MS. CHERRY: Yes, your Honor. However -- this is  
5 Rita Cherry. However, I did first send an email to  
6 plaintiffs' counsel letting them know that I believe that a  
7 discussion would be appropriate, and plaintiffs' counsel  
8 responded and recommended that I file objections with the  
9 Court. And instead, I said, let's just talk with the Court  
10 first. So that's where we are, your Honor.

11 MR. WILLIAMS: Your Honor, this is Shean Williams  
12 speaking on behalf of the plaintiff. Specifically, your  
13 Honor, I don't know what the issue is because I've never had a  
14 discussion with Ms. Cherry as specifically what topic or what  
15 specific issue she or the City had with plaintiffs' notice,  
16 30(b)(6) notice. And so I assume that we're here because  
17 certain aspects of the notice, but I don't know exactly which  
18 specific topics are at issue or what the legal basis for the  
19 argument under the federal rules are.

20 THE COURT: I think I'm in the same spot,  
21 Mr. Williams. I think it would have been better for the City  
22 to have laid out their issues with you all and tried to come  
23 to an agreement and then come to the Court, but we are close  
24 to the end of discovery in this case. I have looked back. I  
25 think this is our fifth or maybe sixth teleconference on a

1 discovery issue, which I think is more than I've had on all of  
2 the other cases I have in the same period of time. So part of  
3 me thinks that that meant y'all should be talking more, but,  
4 on the other hand, I'm just going to do whatever I can do to  
5 get y'all to the end of discovery.

6 MR. WILLIAMS: Thank you, your Honor, and that is  
7 fine. I just don't even know what I'm prepared to address  
8 because I don't know what the issues are. So the only point I  
9 was making when the Court said you believe this is how we got  
10 here, I was letting the Court know that on the plaintiffs'  
11 perspective I couldn't agree with it because I don't know how  
12 we got here. All I know is she, Ms. Cherry, said that she  
13 had -- the direct quote I got was that our 30(b)(6) exceeded  
14 the scope of the 30(b)(6).

15 And then I specifically sent an email asking what  
16 specific topics are you objecting to and what the basis is,  
17 then the only response I got was duplicative, which I still  
18 had never heard as an objection. So I don't know what the  
19 issue is and I'm -- I'll wait to hear from the City and then  
20 try my best to address it.

21 THE COURT: Okay. All right. Ms. Cherry, it's up to  
22 you.

23 MS. CHERRY: All right, your Honor. Thank you very  
24 much. Judge, first of all, I'd like to say that I did send  
25 plaintiffs' counsel an email stating that the City contends

1 that the topics in there, in Exhibit A of their 30(b)(6)  
2 notice, exceeded the scope of a 30(b)(6) under the federal  
3 rules, as well as many of them were duplicative. And so  
4 that's where we are.

5 THE COURT: Okay.

6 MS. CHERRY: Well, first of all, your Honor, the City  
7 has concerns about the 30(b)(6) notice, specifically Exhibit  
8 A, both procedurally and substantively. For starters, in our  
9 last conference on August 2nd of 2018 the Court made it clear  
10 that discovery has gone on a long time. It has just taken  
11 plaintiffs a long time to notice the 30(b)(6), and plaintiffs'  
12 counsel represented to the Court that he could notice the  
13 30(b)(6) deposition right now. Those were his words. He said  
14 that it was 95 percent complete, and he is in a position to  
15 notice it now. That was on August 2nd.

16 The deposition was not noticed until the end of  
17 August, specifically August 31st. The reason that that is  
18 important is relative to the scope, your Honor. The scope of  
19 the deposition we anticipate would require somewhere between  
20 seven to nine designees, and the testimony could go on for  
21 days given the breadth of the topics and the information  
22 requested.

23 As to our concerns with the substance of these  
24 topics, many of the topics where plaintiff seeks testimony  
25 have already been provided to plaintiff in the form of a fact

1 witness. And looking at the topics, the City would in all  
2 likelihood designate the same individual who provided  
3 testimony as a fact witness or as a 30(b)(6) witness because  
4 there's no difference between that individual's knowledge and  
5 the City's knowledge. So that's number one. They are  
6 duplicative in that the topics cover matters which have been  
7 covered and would be covered by the identical same person.

8 The second thing, your Honor, is that several of the,  
9 quote unquote, topics seem to be nothing more than a request  
10 for verification of an interrogatory response or document  
11 request response. As His Honor will see, that many of the  
12 topics request confirmation as to whether you've produced  
13 everything or whether this is everything in its entirety.

14 The other concern is that the 30(b)(6), the  
15 underlying meaning and understanding and reason for the  
16 30(b)(6) is to provide the corporation's knowledge and to  
17 streamline this process. Plaintiff is seeking information  
18 that almost appears to be delving into matters which have --  
19 should have been covered during discovery in the year and a  
20 half that we've been conducting discovery and also borders the  
21 mental impressions of the City. And I'm specifically with  
22 this concern referencing those topics on the Citizens Review  
23 Board.

24 And I'll say this, finally, your Honor, that all of  
25 those questions -- topics that are presented on the Citizens

1 Review Board have family -- the director of the Citizens  
2 Review Board has been deposed by plaintiffs. All of the  
3 investigators for the Citizens Review Board have been deposed.  
4 Chief Turner has been deposed at length on this, and these  
5 will be the same witnesses designated again. So the City  
6 believes in that regard much of this is duplicative. Much of  
7 this seeks nothing more than a verification of submitted  
8 discovery, and we believe that given the scope plaintiffs'  
9 counsel just took too long to notice this, vis-a-vis his  
10 representation to the Court that he was ready to move forward  
11 on August 2nd.

12 THE COURT: Well, I mean, I see what you're saying,  
13 that some of these are -- they don't look like any 30(b)(6)  
14 subject designations that I've ever seen before. I'm not sure  
15 how that cuts. I mean, you know, like No. 1, as far as I'm  
16 concerned, No. 1 allows for one question to be asked. Are  
17 these all the reports? And I think the answer is yes or no.

18 MS. CHERRY: We agree, your Honor.

19 THE COURT: And so I'm just not sure that -- on the  
20 other hand, I'm not sure that they can't do something that  
21 specific. No. 4, No. 5, confirm whether --

22 MS. MILLER: And, your Honor, if I --

23 THE COURT: Give me a second to read this.

24 MS. MILLER: I'm sorry. Okay.

25 (Brief Pause.)

1                   THE COURT: I think these are sort of requests for  
2 admissions.

3                   MR. WILLIAMS: Does the Court want to hear from the  
4 plaintiff or -- I just didn't know if we were asking the  
5 question to us.

6                   THE COURT: I'm just looking at them for a minute. I  
7 mean, the City hasn't given any more specific we don't agree  
8 with this number or that number.

9                   MS. CHERRY: Your Honor, we do have them itemized,  
10 but just for brevity sake, I sort of did an overall, you know,  
11 overview.

12                  THE COURT: I get it. I get it. I mean, let's hear  
13 from the plaintiff. I mean, I think that one -- I think that  
14 4, 5, 6, 7, I don't think you're going to get more than a  
15 one-word answer. I know it says to include an explanation of  
16 the adverse actions pertaining to the following officers, but  
17 do you really expect somebody to come in with knowledge of  
18 every one of these officers and all of the level of detail  
19 that you've requested?

20                  MR. WILLIAMS: So which -- to answer the Court's  
21 question regarding that particular thing, yes, we do  
22 specifically request somebody pursuant to what the civil --  
23 the Federal Rules of Civil Procedure says the scope of a  
24 30(b)(6) allows us to do. Sometimes the question would be  
25 just a yes or no question but under the rules -- and I have

1 cases that support this. That's why I really would have liked  
2 to know what specifically their position is, because I would  
3 have liked to have briefed it and given the Court the law on  
4 this. But the bottom line is, your Honor, is Rule 30(b)(6) --  
5 and I will cite this. 2013 U.S. District Lexis 202343. It's  
6 a northern district court --

7 THE COURT: 202343?

8 MR. WILLIAMS: 2013 U.S. District Lexis 202343, your  
9 Honor.

10 THE COURT: What's the name of the case?

11 MR. WILLIAMS: It is the *Monopoly Hotel Group LLC v.*  
12 *Hyatt Hotels Corp.* And this issue about the scope of a  
13 30(b)(6) came up, and the relevant law that I think that I  
14 want to address, what Mrs. Cherry said about duplicative and  
15 those things and opinions and beliefs, it says the designated  
16 witness must testify not only about the facts within the  
17 corporation's collective knowledge but also about the  
18 corporation's position, beliefs, and opinions. Designee  
19 presents corporate position and subjective beliefs and  
20 opinions in interpretation of documents and events.

21 And so what we've done, your Honor, is -- one aspect  
22 of our questions is to, in fact, get a corporate  
23 representative, which we have a right under 30(b)(6), to  
24 confirm that they have, in fact, produced all of the documents  
25 that we have requested in certain aspects of discovery, which

1 is going to be -- is an important thing. So you're right. It  
2 is in a sense like a request for admissions, but we have a  
3 right to ask a corporate representative to be present on the  
4 record on behalf of the company, which is the City of Atlanta,  
5 to provide.

6 It also, as relates to duplicative, this is a  
7 30(b)(6). The fact witnesses are speaking on behalf of their  
8 individual knowledge and information as fact witnesses. As  
9 relates to the 30(b)(6) and the purpose of a 30(b)(6), as I  
10 just set forth, is to get the position of the company, which  
11 is the City of Atlanta. And so it is duplicative in a sense  
12 we might have asked those questions to fact witnesses, but we  
13 have a right under 30(b)(6) to have a corporate position on  
14 those same questions, which is going to be relevant in the  
15 potential motions for summary judgment.

16 The case of the *City of Atlanta v. Brown*, which is a  
17 summary judgment case where the City filed a motion for  
18 summary judgment and Judge Pannell denied that motion, he  
19 actually used the testimony of the City 30(b)(6) witnesses in  
20 support of denying the motion. And so these topics that  
21 Ms. Cherry said are duplicative are just questions that we  
22 believe under the Federal Rules of Civil Procedure in the  
23 Northern -- in the case law in the Eleventh Circuit we have a  
24 right to ask the corporate representative.

25 I don't know any case that Ms. Cherry can cite to me

1 that I've seen where duplicative -- that the fact that we ask  
2 the fact witness that question precludes us asking the  
3 corporate representative that question so we can have a  
4 corporate position on that same question.

5 THE COURT: I don't --

6 MS. CHERRY: I can cite to several, if the Court  
7 would like for me to do so.

8 THE COURT: I will tell you, man -- I don't -- I will  
9 tell both of y'all this: I think this is not right for me to  
10 get involved in, and I don't think that this is my highest and  
11 best use right now. I think that these requests are far  
12 different from what is required or what is authorized by  
13 30(b)(6). I don't think that a 30(b)(6) deposition is an  
14 opportunity for you -- for a party to ask every fine-toothed  
15 question that they want to ask that they didn't ask by way of  
16 an interrogatory or a document request. On the other hand, I  
17 think they have a right to have a designee of a corporate or  
18 of a party representative testify to some extent even if it's  
19 duplicate because they have a right to know what the parties'  
20 position is.

21 So if you all want to brief this and you want to file  
22 briefs for me on Monday, you can do that, and then we will  
23 have a hearing next week about it. But I'm going to expect  
24 the plaintiff to provide me some case law that says you can go  
25 into this level of detail, not simply something that says

1 they're required to testify about what they know and what is  
2 available to them from the collective knowledge, but that you  
3 can go into it into parsing this level of detail because I  
4 have not seen them in this level of detail. And if the City  
5 has something that says they can't do it, I'll look at it.

6 I'm not going to extend the discovery in this case  
7 except in regards to Mr. Burns and any limited follow-up that  
8 is required in regards to Burns. But it is kind of apparent  
9 to me that plaintiffs' counsel and the City are not adequately  
10 communicating in the way that they ought to be in order to  
11 conclude this discovery. So I really hope no one is going to  
12 be coming back to this Court to ask for an extension of  
13 discovery regarding Mr. Rogers' -- Rogers states allegations  
14 against the City of Atlanta.

15 MR. WILLIAMS: Your Honor, this is Shean Williams on  
16 behalf of the plaintiff. Can I get some clarity on an issue?  
17 In light of the Court's direction that they're not going to  
18 extend discovery, we have this notice for September 10th.

19 THE COURT: And when does discovery expire?

20 MS. CHERRY: September 14th, your Honor.

21 THE COURT: When did we get notice of this?

22 MS. CHERRY: August 31st. This is Rita Cherry.

23 MR. WILLIAMS: Are you saying when you got -- I'm  
24 confused.

25 THE COURT: I would hold out the 10th to the 14th.

1 Y'all are going to finish these depositions between the 10th  
2 and the 14th. You all -- I heard dates come in here that are  
3 a lot more of what I believed, which was August 2nd to  
4 August 31st. That's a lot of time for nothing to have  
5 happened, for you all to have raised this issue on August 31st  
6 when discovery is fixing to run out.

7 So I hope I have been clear that I am not  
8 anticipating any extensions of discovery in this case given  
9 the way discovery has gone so far. I have been with you all  
10 in this for quite some period of time and am wholly  
11 unimpressed with how much you all have done to advance  
12 discovery. I don't want long things. I'll take five pages  
13 each. I want this very precise. I don't need to know what  
14 the general law is on 30(b)(6).

15 I want to know if you think there is something, the  
16 plaintiff thinks there is something, that allows this level of  
17 detail, and I'd like the City to tell me if there's something  
18 they think prevents them from having to present a witness to  
19 give an official 30(b)(6) answer because some other individual  
20 has given that answer.

21 MR. WILLIAMS: Your Honor, this is Shean Williams.  
22 So I'm clear on what we are to provide -- because the typical  
23 concept is that they file a protective order saying which  
24 specific topics they take issue to and I respond to that, but  
25 I understand that we're not doing that -- what specifically

1 are we to respond to? Which issue? Because is it the  
2 duplicative one or is it the verification of documents one? I  
3 don't know because we have to obviously make a record to make  
4 sure we're on point. So I don't know -- like I said, I've  
5 still never gotten, besides this call, what Ms. Cherry is  
6 taking issue with. I can address whether or not we have a  
7 right to, in the brief for the Court, whether we have a right  
8 to, under the law, to ask a fact witness questions, then ask a  
9 corporate rep. I also --

10 THE COURT: All right. I'll tell you what I'll do.  
11 I'll give you each until tomorrow at the close of business to  
12 file your respective positions, and I'll give you each by the  
13 close of business on Monday to respond to each other. That  
14 way you'll know.

15 MR. WILLIAMS: Okay. Thank you, your Honor, because  
16 I'm not clear on what the issue is other than what you just  
17 said, and I don't know if that's what Ms. Cherry is saying.  
18 So I appreciate that so I can know, since this is kind of  
19 going out of what is normal. Normal course, as the Court  
20 knows, is a protective order would have been filed. We would  
21 have been able to respond to the particular issue, but I just  
22 don't really know -- other than the duplicative things, I  
23 think, and I don't know --

24 MS. CHERRY: Your Honor, this is Rita Cherry. If it  
25 would make things easier, the City will be more than happy to

1 go first, and we'll have everything provided tomorrow, filed  
2 with the Court, served on plaintiff, and then Monday they can  
3 respond if that would make it easier.

4 THE COURT: That's fine.

5 MS. MILLER: Your Honor, this is Staci Miller. I  
6 just have one point to add to that. If we're having briefs  
7 and stuff due on Monday and we have until the 14th to complete  
8 discovery, as Rita has said, there are at least eight  
9 depositions that will need to occur, based upon the breadth of  
10 the notice that we received, at least eight. So, I mean, the  
11 City is going to have to prepare these witnesses for their  
12 depositions. And plaintiffs' counsel, this idea is not lost  
13 upon them. They know that there's going to be multiple  
14 depositions that need to make place all next week, all after  
15 briefings.

16 MR. WILLIAMS: Your Honor, can I just -- I'm very  
17 respectful. I was actually speaking for the record, and I  
18 hadn't finished and I was interrupted. So, first of all, I  
19 wanted to finish what I was saying. But to address exactly  
20 what Ms. Cherry said, if she wants to file something tomorrow  
21 that sets forth those issues, which is the same thing I asked  
22 even before we got on this call, we can address that so that  
23 we are properly in order so that we have a proper record  
24 beyond just this issue in this case.

25 Number two, I was going to ask the Court, in light of

1 the deposition being scheduled on the 10th, right now do you  
2 want us to just hold off on the 10th until the Court rules on  
3 these issues or did you want us to go forward to the extent  
4 that we could? That's what I was trying to get clarity on,  
5 your Honor.

6 THE COURT: I thought I made it clear that I'm not  
7 extending the discovery period. You all can decide scheduling  
8 around that. There's going to be a 30(b)(6) deposition in  
9 this case. I don't think that the City going to object to  
10 every one of these. Perhaps by the end of the day tomorrow  
11 you will know where there is no objection and maybe that  
12 deposition -- I don't know how you all want to do it. But you  
13 all having wasted between August 2nd and August 31st is not a  
14 basis for an extension of discovery. And I have been actively  
15 involved with the parties on this call over the last seven  
16 months or so, and I do not see how this discovery could not  
17 finish by the September deadline.

18 And what I'm hearing on today's call and what I'm  
19 seeing in the other calls that we have make me believe that  
20 there could be no good cause for needing an extension of the  
21 discovery. I can't imagine what it would be having lived  
22 through this with you all. So I would suggest that you do  
23 whatever you all need to do to get depositions done by the  
24 14th. And then discovery will be over, and we'll do whatever  
25 we can.

1                   And then when or if something occurs with Mr. Burns,  
2 we will have the limited discovery that is required there. By  
3 the way, Ms. Prebula, what is the status? Have we gotten to  
4 the day that you anticipated a potential indictment?

5                   MS. PREBULA: Yes, your Honor. Mr. Burns has been  
6 reindicted.

7                   THE COURT: Okay. So we will have to figure out what  
8 that means now and how long there will be a stay of this.  
9 Plaintiffs' counsel agreed to a stay. If there comes a time  
10 when they challenge the need for continued stay, somebody will  
11 tell me that, but until then discovery is going to end as  
12 scheduled.

13                   MR. WILLIAMS: Last thing, your Honor. As relates to  
14 discovery ends on the 14th as scheduled, I assume that does  
15 not include the expert reports of witnesses in light of the  
16 fact of the stay with Mr. Burns; is that correct?

17                   THE COURT: I have not looked at the discovery order  
18 in this case recently enough to know that. Does it indicate  
19 one way or the other?

20                   MR. WILLIAMS: What happened is before your Honor got  
21 involved Judge Batten stated on the record that he understood  
22 the significance of the need of the depth of discovery  
23 involving the officer and any follow-up of that discovery  
24 before we could proceed with expert testimony, as well as  
25 finalization of motions. So, my expert, part of his opinions

1 would obviously rely on the testimony of Burns, as well as any  
2 follow-up witnesses that may flow from Burns's testimony.

3 THE COURT: If that's what Judge Batten ruled, then  
4 I'm not changing what Judge Batten ruled.

5 MR. WILLIAMS: I just wanted clarity because you said  
6 discovery will end in this case on the 14th, so I just wanted  
7 for the record that what you're saying for discovery is  
8 discovery as relates to the factual discovery regarding the  
9 City of Atlanta case. That was the clarity I was trying to  
10 get from the Court.

11 THE COURT: I understand. I'm not trying to do  
12 anything today other than keep us on the glide slope that  
13 we've been on. You've told me that Judge Batten ruled or told  
14 you that discovery, expert discovery, would occur after the  
15 stay regarding to Burns was over with. If that's the case and  
16 if there's nothing else that says to the contrary, that's  
17 still the case. I haven't looked at the scheduling order or  
18 anything to confirm that.

19 MR. WILLIAMS: Okay.

20 MS. PREBULA: Your Honor, this is Mary Prebula. I  
21 don't believe that is included in Judge Batten's order, but I  
22 obviously want to review it again. We'll all have to review  
23 it, but I do not believe that was within his final order.

24 THE COURT: We can all review it. We can talk about  
25 it next week when we talk about the scope of this discovery --

1 of this deposition.

2 MS. CHERRY: Your Honor, may I remind the Court of  
3 one thing? My leave has been submitted to the Court for  
4 September 12th, 13th, and 14, which is next Wednesday through  
5 Friday. And that leave was submitted prior to Plaintiffs'  
6 counsel noticing the deposition, so I want to remind the Court  
7 of that.

8 MR. WILLIAMS: Your Honor, so that we're clear, I  
9 will tell, for the record, what our position is going to be.  
10 We're just going to move forward with the deposition on the  
11 10th, and they can provide whatever witnesses they deem  
12 regarding these topics since the Court has ordered that all  
13 discovery is on the 14th. If there's any questions that are  
14 objected or not responded to, we can take that up with the  
15 Court either in that hearing or at any other motions.

16 As relates to the point that I was talking about  
17 Judge Batten, Mary is right. Judge Batten didn't specifically  
18 say about experts. What he said was he appreciated an  
19 understanding that the plaintiff could not complete and  
20 conclude his case against the City regarding the establishment  
21 of this case regarding motion for summary judgment and to  
22 complete the discovery. What I said in that is reasonably  
23 assuming in that is our expert report because our expert is  
24 going to rely on the testimony of Mr. Burns as well as those  
25 other witnesses.

1                   So for me to provide the City or to do a report now  
2 would be premature because we have not been allowed to  
3 complete the discovery regarding Mr. Burns that we believe is  
4 relevant to the City's -- our claims against the City. That's  
5 why I brought that up. But Mary is right. Judge Batten never  
6 got to the point of the expert issue because we never got that  
7 far.

8                   So I just wanted to clarify to make sure that I  
9 wasn't misleading the Court or saying anything. I just wanted  
10 it clear that the reason we have not identified an expert,  
11 because we haven't been able to complete the discovery on  
12 certain issues regarding Burns and those follow-up witnesses  
13 that our expert would need and be relevant for the report that  
14 would also be relevant to the motion for summary judgment  
15 which Judge Batten did address in that formal order.

16                  THE COURT: I hear you. How long do you all  
17 anticipate discovery would be stayed? I mean, I would assume  
18 that -- is it Sergeant Burns? I don't know if he goes by a  
19 title now or not.

20                  MS. PREBULA: Not any longer, your Honor. He was  
21 Officer Burns. I don't think we know that yet. I think that  
22 there are -- because everything, you know, restarted with this  
23 new indictment and I do not have a timetable. I know that --  
24 I understand there are still motions pending, motions that  
25 were filed that will be reasserted in this case, but I do not

1 have a time frame. I'm happy -- I think it's too new. It's  
2 my understanding the indictment came down yesterday, your  
3 Honor, but I could be incorrect about that. And so I think  
4 it's too new for me to know that, but I'm happy to talk to  
5 criminal counsel and see if I can get a feel for that before  
6 we reconvene next week. I don't know that they will know that  
7 I --

8 MR. WILLIAMS: I can add some insight to that, as I  
9 met with the district attorney's office yesterday after the  
10 indictment. The case, your Honor, is going to be reassigned  
11 to the judge it previously was assigned to, and obviously it's  
12 a new case because it's a reindictment. But the issues --  
13 because some of those issues in discovery have already been  
14 exchanged, the district attorney felt like the process should  
15 go quicker. And I anticipate, hopefully, some type of trial  
16 in this case, hopefully, in the next six to nine months, based  
17 on what the district attorney told us, told the family  
18 yesterday.

19 THE COURT: Okay. All right. So we're all clear  
20 about what's going to happen over the next week or so?

21 MS. CHERRY: This is Rita Cherry. The Court has  
22 instructed us to brief this issue. However, Mr. Williams said  
23 he plans to go forward with the 30(b)(6) on Monday, so we just  
24 wanted to in light of, I guess, my leave next week Wednesday,  
25 Thursday, and Friday --

1                   MR. WILLIAMS: No, I said Tuesday, is the 10th. I  
2 don't think you're on leave on the 10th -- no, it's actually  
3 Monday, I think. It is Monday. You're right.

4                   MS. CHERRY: It's Monday, yes.

5                   MR. WILLIAMS: But I was going to go forward based on  
6 what the Court directed us to do. The Court wouldn't extend  
7 it past the 14th. You have a leave on the 12th through the  
8 14th as well, so I was going to move forward. If there is any  
9 issue, from our perspective I just want to create a record,  
10 and the Court can then rule on the briefs. But at least I  
11 have record. I need to create a record of whatever questions  
12 I ask and what the position is of the City and the Court to  
13 rule on them.

14                  But I think for the purposes of preserving the record  
15 for my client and the Court's directions, if they're not  
16 extending discovery by the -- past the 14th, I have no choice  
17 but to move forward with the depo on the 10th, which I'm  
18 prepared to do.

19                  MS. CHERRY: So, Judge, in light of that, what would  
20 you like for us to do because if Mr. Williams says he's moving  
21 forward on the 10th, and at this -- we're looking at  
22 potentially, based on this, this notice, a minimum of eight  
23 witnesses, a minimum, based on my reasonable calculation, of  
24 maybe three, four days of testimony.

25                  THE COURT: And that goes into your vacation?

1 MS. CHERRY: Yes. Not only that, your Honor, but  
2 even if I were not on leave, Mr. Williams has given us what I  
3 consider to be somewhat of a last minute notice of a very  
4 large number of testimony deposition hours. This would take  
5 most of the week even if I were not on leave.

6 THE COURT: Are you going anywhere fun?

7 MS. CHERRY: Well, the Gate City Bar Association has  
8 a humanitarian trip to Cuba. So I've never been to Cuba, so I  
9 don't know if it will be fun. But I will be participating  
10 with the Bar Association in their efforts.

11 THE COURT: Well, look, Ms. Cherry, I've had you in  
12 this and other matters. I'm not going to jam you up on that.  
13 I'm going to do something I said a minute ago I wasn't going  
14 to do, and that is I'm going to give you two more weeks of --  
15 I mean, if we were to say that we would rule on this on  
16 Tuesday, that gives you -- and then you could do the week of  
17 the 17th to prepare and do depositions on the week of the  
18 24th. Does that work?

19 MS. CHERRY: That would -- I think that would work  
20 for the City, yes.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: I have no problem with that, your  
23 Honor. The only thing I ask is whatever the schedule is on  
24 her filing because --

25 THE COURT: She's filing tomorrow, filing something

1 tomorrow. You're filing something on Monday. Sometime on  
2 Tuesday we're going to talk about it, and then you're going to  
3 have depositions the week of the 24th, as many as it takes the  
4 week of the 24th. But I'm not going to make Ms. Cherry miss  
5 what she's doing, and I'm not going to make the City get  
6 jammed up and rushed because there was a delay between the 2nd  
7 and the 31st of August.

8 MR. WILLIAMS: I have no problem with that, your  
9 Honor. I wasn't trying to delay anything or cause the City  
10 any problems. The only question is I assume this motion that  
11 she's filing tomorrow -- because I'm trying to make sure I'm  
12 procedurally right, and the Court is with the federal rules --  
13 I'm assuming it's a motion for protective order.

14 THE COURT: I don't think it is. All I've asked her  
15 to do is file something short that tells me what her position  
16 is. I don't want it to be more than five pages. But I would  
17 like her to identify the ones that she's objecting to and the  
18 basis with any case law, and then you can do exactly the  
19 same. I'm going on -- I think it is Rule 1 that says that I  
20 should try to do this the most efficient way that I can.  
21 So --

22 MR. WILLIAMS: Rule 1 of the federal rules?

23 THE COURT: Yeah, something like that. There's a  
24 rule in there that talks about making it easy and making it  
25 efficient. Okay?

1                   MR. WILLIAMS: Okay. I will look at that, and I will  
2 address that within our briefing. Thank you, your Honor.

3                   THE COURT: No, I don't mean -- I don't mean you need  
4 to address it.

5                   MR. WILLIAMS: No, your Honor. All I'm saying is  
6 this, your Honor --

7                   THE COURT: Listen to what Rule 1 says. Rule 1 says  
8 that the rules should be construed, administrated, and  
9 employed by the Court to secure the just, speedy, and  
10 inexpensive determination of every action and proceeding. So  
11 I'm going to accept whatever she tells me tomorrow as well as  
12 what she has said today to be a motion for protective order  
13 that is going to give you the time you need, according to what  
14 you've told me you can do today on this call, to make sure  
15 that we can make a thoughtful, correct determination as to the  
16 proper scope of the 30(b)(6) depositions.

17                  MR. WILLIAMS: And, your Honor, I wasn't trying to  
18 suggest that I didn't agree with what you're saying.

19                  THE COURT: Okay.

20                  MR. WILLIAMS: I'm more for clarity because I have a  
21 duty to my client to just protect the record. I was making  
22 sure I understood what we were proceeding under so that when  
23 I'm starting my research and briefing and I respond on Monday,  
24 I'm under the right course or scope because I believe there is  
25 case law regarding this issue that -- how this proceeds and

1 what her vehicle of getting to you. That's why I asked the  
2 question.

3 THE COURT: Are you telling me that what you're going  
4 to brief is whether she has raised the issue the right way  
5 with a protective order?

6 MR. WILLIAMS: I believe there's case law, your  
7 Honor, that says a protective order is not proper in a  
8 30(b)(6) until you ask the question and the topic comes up and  
9 we're supposed to bring it back to you after that. Well, I do  
10 believe there's case law on that but I'm not -- we can address  
11 it at a point.

12 I'm just -- since you asked the question, I don't  
13 even believe what we're doing procedurally if -- depending on  
14 what she's citing and the basis, is the reason why I started  
15 this off, and I asked her to tell me what are we here for,  
16 what is the basis. And why I said to you from a second ago, I  
17 need to know what her position is because my response,  
18 according to the rules and protecting the interest of my  
19 client and the rights in the record, my response is going  
20 to be according to what she's claiming I'm not doing  
21 properly.

22 THE COURT: I understand. But, Mr. Williams, you  
23 filed your 30(b)(6) motion without enough time for us to go  
24 through a long briefing schedule. I want you to address --  
25 you can address whatever you want in the limited space you

1 have, but it is my hope that you will address this question,  
2 whether her specific objections, regardless of the vehicle  
3 used to raise them, whether her specific objections are  
4 substantively correct, whether or not you have a right to take  
5 a deposition that has this type of notice or whether there are  
6 some of them that are objectionable for one reason or another.  
7 That's what I intend to rule upon.

8 I don't want you to come back midway through a  
9 deposition and at that point want a ruling. I'm trying to do  
10 this thoughtfully so that on Tuesday we will rule, and you all  
11 will hopefully know what the ground rules are for the  
12 deposition. If something comes up in the deposition, call me,  
13 but I'm hopeful that that won't happen. But I really hope you  
14 will address the substantive issues that she raises as to  
15 whether or not her objections are valid objections rather than  
16 whether the vehicle is the right vehicle. If you want to  
17 address that too, go ahead and address that too. But given  
18 the scheduling that you all have gotten us into, I'm trying to  
19 give you all an opportunity to get to the substance. Does  
20 that make sense?

21 MR. WILLIAMS: It does, your Honor, and if -- and the  
22 way I understand the law on 30(b)(6) and the objection of the  
23 30(b)(6), which is why I asked Ms. Cherry this question  
24 before, is whenever -- I'm assuming when she files the motion  
25 tomorrow, she's going to go topic by topic and what the

1 specific objection is. Then I can address it each topic  
2 because the law on this issue is with reasonable particularity  
3 as relates to putting the corporate entity on notice to  
4 provide a witness.

5 And so that's why I was just trying to make sure that  
6 we didn't have the same issue on Monday because whatever her  
7 motion is I'm going respond to that part of her motion as the  
8 record -- as I'm required to. I'm not going to go -- I'm  
9 going to answer the Court's question, but I can only answer it  
10 in the context of whatever I know the objection is and why,  
11 and that's all I was saying.

12 THE COURT: Okay.

13 MR. WILLIAMS: I'm very clear now.

14 THE COURT: Okay.

15 MS. PREBULA: Judge, do we -- this is Mary Prebula.  
16 I have a commitment. And I realize I'm tangential to this,  
17 but I think it's important for me to be involved. I have a  
18 commitment to be out of the office Tuesday but can arrange to  
19 call in. I wonder if we wanted to schedule a call at the same  
20 time, like at 3:30 on Tuesday, just so we'd go ahead and have  
21 it, you know, set or if you would like to wait.

22 THE COURT: Does that time work?

23 MS. PREBULA: It would be difficult for me to be  
24 available before 3:30 on Tuesday.

25 THE COURT: 3:30 is fine.

1                   MR. WILLIAMS: I'm actually in a deposition, and  
2 since I am part of the argument -- and I don't think Mary is  
3 part of the argument -- is there another time that we can --  
4 the Court said on Tuesday?

5                   THE COURT: Yes.

6                   MR. WILLIAMS: And, Mary, the first time you're  
7 available is 3:30?

8                   MS. PREBULA: I figured the judge, if he's getting  
9 briefs on Monday, would like to review them, and I thought we  
10 might want to set it. But I will accommodate whatever the  
11 Court tells me to accommodate.

12                  THE COURT: What time will your deposition end,  
13 Mr. Williams?

14                  MR. WILLIAMS: That's the part -- I don't know. If  
15 the Court -- if I could start -- I think we're taking a break  
16 and starting back up. Is 2:00 o'clock possible at all? Mary,  
17 I don't know how long this is going to take, but, Mary, is  
18 2:00 o'clock possible? Because I know that's in between the  
19 two depos.

20                  MS. PREBULA: I'll make it happen if that's what the  
21 Court wants to do.

22                  THE COURT: That's fine. We'll move something here.

23                  MS. CHERRY: Okay. 2:00 o'clock works for the City  
24 as well.

25                  THE COURT: All right. Well, we'll talk to y'all.

1 Thank you.

2 MS. CHERRY: Okay. Thank you, Judge.

3 (Whereupon, the proceedings were adjourned at 4:25

4 p.m.)

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1 REPORTERS CERTIFICATE

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4 I, Wynette C. Blathers, Official Court Reporter for  
5 the United States District Court for the Northern District of  
6 Georgia, with offices at Atlanta, do hereby certify:

7 That I reported on the Stenograph machine the  
8 proceedings held in open court on September 6, 2018, in the  
9 matter of MELVA ROGERS et al. v. CITY OF ATLANTA, et al., Case  
10 No. 1:16-CV-02578-MLB; that said proceedings in connection  
11 with the hearing were reduced to typewritten form by me; and  
12 that the foregoing transcript (Pages 1 through 30) is a true  
13 and accurate record of the proceedings.

14 This the 24th day of September, 2018.

15

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19

/s/ Wynette C. Blathers, RMR, CRR  
Official Court Reporter

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